

## PATENT COOPERATION TREATY

PCT

## NOTIFICATION OF ELECTION

(PCT Rule 61.2)

From the INTERNATIONAL BUREAU

To:

Commissioner  
 US Department of Commerce  
 United States Patent and Trademark  
 Office, PCT  
 2011 South Clark Place Room  
 CP2/5C24  
 Arlington, VA 22202  
 ETATS-UNIS D'AMERIQUE  
 in its capacity as elected Office

Date of mailing (day/month/year) 24 April 2001 (24.04.01)	
International application No. PCT/AU00/00962	Applicant's or agent's file reference 2323507/JMS
International filing date (day/month/year) 11 August 2000 (11.08.00)	Priority date (day/month/year) 13 August 1999 (13.08.99)
Applicant LURIE, Israel, Raleigh et al	

1. The designated Office is hereby notified of its election made:

☒ in the demand filed with the International Preliminary Examining Authority on:  
 26 February 2001 (26.02.01)

☐ in a notice effecting later election filed with the International Bureau on:  
 \_\_\_\_\_

2. The election ☒ was  
☐ was not

made before the expiration of 19 months from the priority date or, where Rule 32 applies, within the time limit under Rule 32.2(b).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland  Facsimile No.: (41-22) 740.14.35	Authorized officer  Nestor Santesso  Telephone No.: (41-22) 338.83.38
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Copy for the Elected Office (EO/US)

PCT/AU00/00962

## TENT COOPERATION TREATY

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NOTIFICATION OF THE RECORDING  
OF A CHANGE(PCT Rule 92bis.1 and  
Administrative Instructions, Section 422)

From the INTERNATIONAL BUREAU

To:

SLATTERY, John, Michael  
Davies Collison Cave  
1 Little Collins Street  
Melbourne, VIC 3000  
AUSTRALIE

Date of mailing (day/month/year) 01 March 2002 (01.03.02)	IMPORTANT NOTIFICATION
Applicant's or agent's file reference 2323507/JMS	
International application No. PCT/AU00/00962	International filing date (day/month/year) 11 August 2000 (11.08.00)

## 1. The following indications appeared on record concerning:

☒ the applicant ☒ the inventor ☐ the agent ☐ the common representative

## Name and Address

LURIE, Israel, Raleigh  
42B Windella Road  
East Kew, VIC 3101  
Australia

## State of Nationality

AU

## State of Residence

AU

## Telephone No.

## Facsimile No.

## Teleprinter No.

## 2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

☐ the person ☐ the name ☒ the address ☐ the nationality ☐ the residence

## Name and Address

LURIE, Israel, Raleigh  
42B Windella Avenue  
East Kew, VIC 3102  
Australia

## State of Nationality

AU

## State of Residence

AU

## Telephone No.

## Facsimile No.

## Teleprinter No.

## 3. Further observations, if necessary:

## 4. A copy of this notification has been sent to:

<input checked="" type="checkbox"/> the receiving Office	<input type="checkbox"/> the designated Offices concerned
<input type="checkbox"/> the International Searching Authority	<input checked="" type="checkbox"/> the elected Offices concerned
<input type="checkbox"/> the International Preliminary Examining Authority	<input type="checkbox"/> other:

The International Bureau of WIPO  
34, chemin des Colombettes  
1211 Geneva 20, Switzerland

Facsimile No.: (41-22) 740.14.35

## Authorized officer

François BAECHLER

Telephone No.: (41-22) 338.83.38

## INTERNATIONAL SEARCH REPORT

International application No.  
PCT/AU00/00962

<b>A. CLASSIFICATION OF SUBJECT MATTER</b>		
Int. Cl. <sup>7</sup> : A61B 10/00, A61M 3/04		
According to International Patent Classification (IPC) or to both national classification and IPC		
<b>B. FIELDS SEARCHED</b>		
Minimum documentation searched (classification system followed by classification symbols) A61B 10/IC, A61D/IC, A61M/IC		
Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched AU: IPC AS ABOVE		
Electronic data base consulted during the international search (name of data base and, where practicable, search terms used) DERWENT JAPIO		
<b>C. DOCUMENTS CONSIDERED TO BE RELEVANT</b>		
Category*	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
P, X	US 5964735 A (Alexander) 12 October 1999 See entire document.	1-5
X	US 4643196 A (Tanaka et al.) 17 February 1987 See figure 11.	1-5
A	US 4693257 A (Markham) 15 September 1987 See column 3 lines 1-19.	
<input checked="" type="checkbox"/> Further documents are listed in the continuation of Box C <input checked="" type="checkbox"/> See patent family annex		
* Special categories of cited documents: "A" document defining the general state of the art which is not considered to be of particular relevance "E" earlier application or patent but published on or after the international filing date "L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified) "O" document referring to an oral disclosure, use, exhibition or other means "P" document published prior to the international filing date but later than the priority date claimed "T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention "X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone "Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art "&" document member of the same patent family		
Date of the actual completion of the international search 27 September 2000		Date of mailing of the international search report - 4 OCT 2000
Name and mailing address of the ISA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929		Authorized officer  JOHN HO Telephone No : (02) 6283 2329

## INTERNATIONAL SEARCH REPORT

International application No.  
PCT/AU00/00962

C (Continuation). DOCUMENTS CONSIDERED TO BE RELEVANT		
Category*	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	FR 2315951 A (BERNON) 28 January 1977 See figure 1-5.	
A	US 3636940 A (GRAVLEE) 25 January 1972 See entire document.	
A	US 4194513 A (RHINE et al) 25 March 1980 See entire document.	
A	US 5217023 A (Langdon) 8 June 1993 See entire document.	

**INTERNATIONAL SEARCH REPORT**  
Information on patent family members

International application No.  
**PCT/AU00/00962**

This Annex lists the known "A" publication level patent family members relating to the patent documents cited in the above-mentioned international search report. The Australian Patent Office is in no way liable for these particulars which are merely given for the purpose of information.

Patent Document Cited in Search Report			Patent Family Member			
US	5964735	NONE				
US	4643196	JP	61035923			
US	4693257	NONE				
FR	2315951	NONE				
US	3636940	NONE				
US	4194513	NONE				
US	5217023	AU	63960/94	CA	2149023	WO 9410911
		EP	668744			
END OF ANNEX						

REC'D 24 JUL 2001


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Applicant's or agent's file reference 2323507/JMS/RAH	<b>FOR FURTHER ACTION</b>	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. <b>PCT/AU00/00962</b>	International Filing Date ( <i>day/month/year</i> ) 11 August 2000	Priority Date ( <i>day/month/year</i> ) 13 August 1999
International Patent Classification (IPC) or national classification and IPC  Int. Cl. <sup>7</sup> A61B 10/00, A61M 3/04		
Applicant R. LURIE PTY LTD et al		

1.	This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2.	This REPORT consists of a total of 5 sheets, including this cover sheet.  <input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).  These annexes consist of a total of sheet(s).
3.	This report contains indications relating to the following items:  I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input checked="" type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 26 February 2001	Date of completion of the report 11 July 2001
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  <b>JOHN HO</b> Telephone No. (02) 6283 2329

**I. Basis of the report**

1. With regard to the elements of the international application:\*
- ☒ the international application as originally filed.
- ☐ the description,        pages , as originally filed,  
   pages , filed with the demand,  
   pages , received on    with the letter of
- ☐ the claims,        pages , as originally filed,  
   pages , as amended (together with any statement) under Article 19,  
   pages , filed with the demand,  
   pages , received on    with the letter of
- ☐ the drawings,        pages , as originally filed,  
   pages , filed with the demand,  
   pages , received on    with the letter of
- ☐ the sequence listing part of the description:  
   pages , as originally filed  
   pages , filed with the demand  
   pages , received on    with the letter of
2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.  
These elements were available or furnished to this Authority in the following language which is:
- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).
3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished
4. ☐ The amendments have resulted in the cancellation of:
- ☐ the description,        pages
- ☐ the claims,        Nos.
- ☐ the drawings,        sheets/fig.
5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims 2-3, 6-22	YES
	Claims 1, 4 and 5	NO
Inventive step (IS)	Claims 2-3, 6-22	YES
	Claims 1, 4 and 5	NO
Industrial applicability (IA)	Claims 1-22	YES
	Claims -	NO

**2. Citations and explanations (Rule 70.7)**

The following documents identified in the International Search Report have been considered for the purposes of this report:

D1 - US 4643196 A

**Novelty (N): Claims 1, 4-5**

The present statement of claims is directed to a device and a method for collection of a fluid sample respectively. The device comprises a barrel having an opening at one end thereof, a plunger axially movable in the barrel wherein the barrel and the plunger defines a fluid chamber having a volume which varies on axial movement of the plunger. A hollow elongate tube extends from the fluid chamber through the opening in the barrel to provide a fluid path to and from the fluid chamber. The tube is also in operative engagement with the plunger to extend and retract the tube with respect to the barrel on axial movement with the plunger. The method for collecting fluid sample involves locating the end of a hollow tube at the opening of an internal cavity, penetrating the internal cavity by moving the tube into the cavity while simultaneously passing wash fluid through the hollow tube to wash at least a portion of the surface of the internal cavity, and subsequently retracting the tube from the cavity while simultaneously collecting a fluid sample by aspirating the wash fluid through the hollow tube.

The closest art, D1, discloses a biopsy needle set having an inner needle (28) which is attached to the end of the plunger (30). The inner needle (28) is provided with an aperture (28b) adjacent the distal closed tip of the needle (28) and another aperture (28c) at the rear portion of the needle (28). These needle apertures (28b, 28c) are in fluid communication with the space (23a) defined by the inner wall of the cylinder (23) and the plunger (30). This citation clearly discloses the invention defined by claims 1, 4 and 5.

D1 however does not disclose the method defined by claim 16.

**Inventive Step (IS): Claims 1, 4 and 5**

Claims 1, 4 and 5 also lack an inventive step for the reasons given above.



**VI. Certain documents cited****1. Certain published documents (Rule 70.10)**

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date ( valid claim) (day/month/year)
US 5964735	12 October 1999	1 July 1997	1 July 1997

This citation appears to disclose the device of claims 1, 4 and 5. Specifically this citation discloses a fine needle aspiration syringe having a needle connected to the plunger (see 5 for instance). The needle (7) has a first opening (90) *on or proximate the sharp end* and a second opening (91) located along the length of the needle (7). Column 4 lines 34-37 describes the fluid receiving cavity (100) being in fluid communication with the needle opening (91). Column 5 lines 21-25, column 6 lines 20-24 and figures 1-6 clearly show that retraction of the plunger causes the needle to be retracted while creating a negative pressure in the fluid receiving cavity (100) to draw aspirated fluid therein.

**2. Non-written disclosures (Rule 70.9)**

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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**Supplemental Box**

(To be used when the space in any of the preceding boxes is not sufficient)

**Continuation of Box V**

With regard to the document(s) listed in Box VI under "certain documents cited", these are documents published prior to the international filing date but later than the priority date claimed but which would otherwise be considered to be of particular relevance.

Under the PCT, novelty is considered only in respect of documents published before the priority date. The relevance of a document published after the priority date is dependent upon national law. Such documents are excluded from consideration in preliminary examination, under the PCT Guidelines but have been included here for information.